

RONALD BEADLE

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v.

HAMZAH HM SAMAN & ORS

HIGH COURT MALAYA, KUALA LUMPUR

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TENGKU MAIMUN JC

[SUIT NO: S4(S6)-21-64-2000]

22 FEBRUARY 2007

TORT: *False imprisonment - Damages for - Recovery of Income tax - Tax officer negligently issuing certificate under s. 104 Income Tax Act 1967 resulting in plaintiff's British passport being withheld for 5968 days - Liability - Whether defendants liable for aggravated damages - Quantum*

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ADMINISTRATIVE LAW: *Exercise of administrative powers - Public officer - Whether to exercise power reasonably and for a proper purpose - Whether having no absolute discretion in public law - Tax officer unreasonably issuing certificate under s. 104 Income Tax Act 1967 - Plaintiff's British passport withheld for 5968 days - Whether liable for false imprisonment*

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REVENUE LAW: *Income tax - Collection and recovery - Certificate under s. 104 Income Tax Act 1967 - Issuance - Whether to be issued for a proper purpose - Certificate issued for no apparent or valid reason - Whether could be liable in damages - Income Tax Act 1967, ss. 83, 104*

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The plaintiff, a British national, was employed by one SEA Helicopter (M) Sdn Bhd ('SEAH'). In December 1980, the plaintiff left his employment, whereof SEAH, at the behest of the second defendant, the Inland Revenue Department ('JHDN'), deducted some RM27,943 from the plaintiff's salaries towards payment of his personal income tax. SEAH failed to remit the deducted sum to JHDN, and arising therefrom the third defendant, the Government of Malaysia, sued SEAH and obtained a judgment and a winding up order against SEAH. The judgment against SEAH notwithstanding, a certificate under s. 104 of the Income Tax Act 1967 was still issued by the first defendant, the Assistant Director General of JHDN, against the plaintiff, resulting in the plaintiff's British International passport being impounded by the police on 3 April 1982. The plaintiff appealed for the return

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- A of his passport, and for him to be allowed to travel to the United Kingdom to see his dying father, but to no avail. Be that as it may, in 1986, the third defendant applied to set aside the judgment obtained against SEAH and instead filed a suit against the plaintiff personally to recover the alleged outstanding tax. That
- B suit was allowed by the Sessions Court in 1996, but on appeal, the High Court reversed the decision. The third defendant did not appeal against the decision of the High Court, but all the same, did nothing to either withdraw the s. 104 certificate or return the plaintiff's passport. And so it was that it was not until 21 April
- C 1998 that the plaintiff's new European Community, United Kingdom of Great Britain and Northern Ireland International passport was validated and returned to the plaintiff. The plaintiff alleged that his passport was being unreasonably detained for 5968 days – and further that he was being falsely imprisoned within
- D West Malaysia during the period thereby depriving him of lucrative jobs elsewhere – and in the circumstances filed the present suit seeking loss of potential earnings of RM2,935,568.65 and general and aggravated damages for false imprisonment. The defendants argued that the s. 104 certificate was duly issued pursuant to the
- E first defendant's statutory powers, that the plaintiff's claim was statute barred and that the plaintiff's suit was highly prejudicial since the first defendant had already passed away.

Held (allowing general and aggravated damages; disallowing loss of earnings):

- F (1) The issue of limitation can no longer be revived in the face of the clear judgment of the Court of Appeal in *Ronald Beadle v Hamzah HM Saman and Lembaga Hasil Dalam Negeri*, whereof the court ruled that the plaintiff's cause of
- G action "began to run from the time his passport was released, that is from 24 April 1998, and that since he had filed his claim on 21 May 2000, he was therefore well within the 36 months prescribed in the second limb of s. 2(1) of the Public Authorities Protection Act 1948". Likewise, the
- H first defendant's death could not have prejudiced the defendants' case, as other relevant officers of JHDN could have given evidence on the records kept by JHDN. (para 14)

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- (2) Given the fact that SEAH had already deducted the plaintiff's monthly salaries and the third defendant had already instituted a claim for the recovery of the tax against SEAH and had in fact obtained judgment against SEAH on 24 October 1981, clearly there was no tax payable personally by the plaintiff to the third defendant as at the date when the first defendant issued the s. 104 certificate on 17 December 1981. (para 19) A B
- (3) It is incumbent upon the defendants to make known the basis of the first defendant's opinion which necessitates the issuance of the certificate. However, the defendants saw it fit not to adduce any evidence hereon. In any case, in the light of the plaintiff's testimony that he had no intention to leave Malaysia, that he had married a Malaysian Chinese, that he had adopted a Malaysian Chinese daughter who had just started schooling and that he had incorporated a few companies here – and in the absence of any evidence as to how the first defendant formed his opinion and in the light of the judgment obtained against SEAH – there is no basis in law and in fact for the first defendant to issue the certificate. The first defendant had acted arbitrarily and unreasonably when issuing the certificate and his action was not consonant with the purpose of s. 104. (para 21) C D E
- (4) The plaintiff had failed to prove the loss of earnings. The plaintiff's testimony that he could have gone to work in Western Europe as an Aviation Department Manager with such amount of salary is too theoretical and cannot serve as a proof. In the premises this claim must fail. (para 27) F
- (5) Although the plaintiff has not been falsely imprisoned *per se*, the defendants had nonetheless acted unreasonably and improperly and the first defendant was wrong in law and in fact to have issued the certificate. The acts and neglect of the defendants had caused the plaintiff worry, stress, anxiety, mental anguish, distress, hurt and helplessness and his mind and self esteem had been injured for more than 16 years, the greatest stress being the denial to visit his ailing father and to attend his father's funeral. The facts further showed that the plaintiff, who had arrived in Malaysia as part of the British Army in 1961, was involved in fighting the communists for this country, and so, suffered much agony in being so treated by the defendants. (para 28) G H I

- A (5a) For the suffering arising out of the defendants' conduct herein, an award of general damages in the sum of RM2 million to the plaintiff would be fair and reasonable. The plaintiff, further, ought to be entitled to exemplary damages considering that the defendants had carried out their powers
- B arbitrarily and without any reasonable regard to the interest of the plaintiff. In the absence of a fixed formula for awarding exemplary damages, a sum of RM1 million would be fair in the circumstances. (paras 30 & 31)
- C *[Judgment for RM3 million entered for the plaintiff with interest at 8% per annum from the date of judgment until realization and costs.]*

Case(s) referred to:

- Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169 CA (foll)
- D *Ong Bee Yam v. Pengarah Hasil Dalam Negeri Sarawak & Anor* (High Court in Sabah & Sarawak at Kuching OS 24-280-2001) (Unreported) (refd)
- Pengarah Tanah dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 (foll)
- Premachandra v. Major Montague Jayawickrema* [1994] 2 Sri LR 90 (refd)
- E *Ronald Beadle v. Hamzah HM Saman & Ors* [2007] 1 CLJ 421 CA (refd)
- Ronald Beadle v. Kerajaan Malaysia* [1998] 1 CLJ Supp 392 HC (refd)
- Rookes v. Barnard* [1964] AC 1129 (refd)
- Savrimuthu Sinnapan v. PP* [1987] 1 CLJ 368; [1987] CLJ (Rep) 322 SC (foll)
- F *Tai Choi Yu v. The Government of Malaysia & Ors* [1994] 2 CLJ 174 SC (foll)

Legislation referred to:

Income Tax Act 1967, ss. 83, 103, 104(1)
Rules of the High Court 1980, O. 18 r. 19(1)(b), (d)

G Other source(s) referred to:

McGregor on Damages, 15th edn, para 429

For the plaintiff - M/s Jeffery Wong, Noorul & Lim

For the defendants - Puan Mahiran; SFC

H Reported by WA Sharif

JUDGMENT

Tengku Maimun JC:

- I [1] The plaintiff's claim against the defendants is for RM2,935,568.65 being loss of potential earnings, for general and exemplary damages, interest and costs for the wrongful acts and

neglects or defaults committed by the 1st defendant as a public officer acting as an agent of the 3rd defendant. The plaintiff's cause of action is based on tort and negligence arising out of the issuance of a certificate by the first defendant, the Assistant Director General of the former Jabatan Hasil Dalam Negeri (JHDN) under s. 104 of the Income Tax Act 1967 (the Act).

[2] The plaintiff, a British citizen started his employment with SEA Helicopter (M) Sdn Bhd (SEAH) on 29 February 1972 and he resigned from SEAH effective on 31 December 1980. When the plaintiff left SEAH, a total sum of RM27,943 had been deducted from his monthly salaries and held by SEAH towards payment of his outstanding personal income tax. These deductions were made in accordance with the Direction To Employer To Deduct Tax Forms issued by the JHDN to SEAH (pp. 123-130 of bundle B).

[3] Pursuant to s. 83 of the Act SEAH notified JHDN of the plaintiff's resignation (p. 6 of bundle B). After receiving the notification from SEAH, JHDN wrote to the plaintiff on 23 February 1981 informing him that SEAH had been instructed to withhold all sums payable by SEAH to the plaintiff pending clearance from JHDN and that the plaintiff was required to notify JHDN should there be a change of address.

[4] The plaintiff replied on 5 March 1981 informing JHDN of his residential address and that he was awaiting the issue of a work permit for him to be employed by Eagle Aviation Services Sdn Bhd, a company incorporated by the plaintiff (p. 9 of bundle B). JHDN then directed SEAH to remit to it a sum of RM22,778.70 being the plaintiff's personal income tax (p. 10 of bundle B). On 30 May 1981 the JHDN also wrote to Eagle Aviation Services Sdn Bhd to inquire about the plaintiff's employment with the company.

[5] SEAH failed to remit the said sum to JHDN and as a result, the 3rd defendant issued a summons against SEAH for recovery of the said sum and obtained judgment on 24 October 1981. On or about 13 February 1984 the 3rd defendant obtained a winding up order against SEAH (pp. 24-29 and 30 of bundle B).

A [6] Notwithstanding the fact that judgment was obtained against SEAH for the recovery of the said income tax on 24 October 1981, the first defendant on 17 December 1981 issued a certificate under s. 104 of the Act as against the plaintiff resulting in the plaintiff's British International passport being taken into custody by the Sentul Police Station on 3 April 1982.

C [7] On 6 April 1982 the plaintiff wrote to the 1st defendant placing on appeal a request that the 1st defendant withdrew the certificate dated 17 December 1981. On 7 April 1982 the plaintiff wrote another letter to the 1st defendant advising the 1st defendant that he had just recently received a copy of the judgment against SEAH for the payment of RM22,778.70 in respect of the personal income tax allegedly owed by him. To the plaintiff's letter dated 6 April 1982, the 1st defendant replied on 22 April 1982 that he was not in a position to withdraw the certificate without giving any reasons. The 1st defendant did not bother to respond to the other letters written by the plaintiff.

E [8] From the moment the plaintiff's British International Passport was taken into custody, the plaintiff had tirelessly communicated with the officers of the JHDN for the return of his passport but to no avail. He then commenced an action in the Kuala Lumpur High Court OS No. P31-51-86 (see p. 26 of NABOD) to seek the return of his British International Passport.

F [9] Sometime in 1986, for reasons best known to them, the 3rd defendant applied to set aside the judgment obtained against SEAH and filed a suit against the plaintiff instead *vide* Summons No P21-457-86 for the alleged outstanding personal income tax of RM28,160.70 which is inclusive of the sum of RM22,778.70 owed by SEAH to JHDN. The summons was never served on nor disclosed to the plaintiff until February 1987 when halfway through the hearing of the plaintiff's action for the release of the passport the solicitors for the 3rd defendant requested the court to adjourn the plaintiff's action until their claim has been disposed off.

I [10] In the meantime, on or about 11 February 1993 the plaintiff learned that his father was severely ill with cancer of the pancreas and was not expected to live beyond the weekend. A letter was then written to the Malaysian Immigration Department to validate his new European, United Kingdom of Great Britain and Northern

Ireland International Passport (which was issued by the British High Commission after being advised by the plaintiff that his British International Passport was taken into custody by the Malaysian police) to travel to the United Kingdom to see his father for one last time. His request was turned down with no apparent reason. On 13 February 1993 the plaintiff received a telegram from his brother that his father had passed away. The plaintiff could not see his father for the last time nor attended his funeral.

[11] On the summons by the 3rd defendant, judgment was subsequently obtained against the plaintiff on 20 November 1996 in the Sessions Court. Against this judgment, the plaintiff appealed to the High Court whereupon the order of the Sessions Court was reversed. Abdul Kadir Sulaiman J in *Ronald Beadle lwn. Kerajaan Malaysia* [1998] 1 CLJ Supp 392 at p. 399 said:

Dengan yang demikian, mengikut peruntukan s. 107(5) tersebut jika dikenakan kepada situasi kes ini, SEAH adalah bertanggungjawab untuk membayar cukai perayu berasaskan arahan KPHDN tersebut. Apatah lagi di dalam hal ini, potongan telah dibuat ... Di dalam keadaan begini KPHDN adalah betul dengan mengambil tindakan melalui Guaman Sivil ... ke atas SEAH dan telah pun memperolehi penghakiman terhadapnya. Tetapi yang anehnya setelah berusaha sedemikian dan mengambil tindakan menggulung syarikat SEAH, pihaknya telah memohon supaya penghakiman tersebut dibatal dan akibatnya mahkamah telah membatalkan penghakiman tersebut. Dapat difaham sekarang mengapa KPHDN mengambil tindakan untuk membatalkan penghakiman tersebut kerana ia berhasrat untuk mengambil tindakan ini ke atas perayu sendiri. Jika pembatalan tidak dibuat pihaknya menampakkan telah mengambil tindakan yang bertindih, sekali terhadap SEAH dan sekali lagi terhadap perayu.

Maka oleh kerana prosiding yang teratur telah dijalankan terhadap SEAH berasaskan peruntukan s. 107 Akta tindakan ke atas perayu oleh KPHDN untuk mendapat pembayaran cukainya yang berada di tangan SEAH adalah terhapus kerana tanggungan ke atas jumlah wang cukai perayu yang berada di tangan SEAH mengikut peruntukan s. 107(5) itu adalah berpindah kepada SEAH ... nyatalah bahawa tuntutan cukai ke atas perayu oleh responden tidak lagi berbangkit setakat tempoh masa dan jumlah wang yang berada dalam milikan SEAH walaupun penghakiman ke atas SEAH dibatalkan di atas permintaan pihak responden.

A [12] The 3rd defendant did not appeal against the above said
High Court judgment. Notwithstanding the judgment, the
defendants took no steps to either withdraw the certificate or
return the plaintiff's British International passport. In fact the
B passport was never returned to the plaintiff. It had been misplaced
by the police! But the plaintiff took the effort to approach the
Sentul Police Station. A letter from the Sentul Police Station was
then issued to the Immigration Department to enable the
Immigration Department to validate the plaintiff's new European
Community, United Kingdom of Great Britain and Northern
C Ireland International Passport on 21 April 1998. The plaintiff left
Malaysia for England in March 1999.

[13] The plaintiff therefore claims that his British International
passport was detained for 5968 days without any valid reason.
D Hence his contention that he was falsely imprisoned within West
Malaysia and was deprived of liberty of movement and human
rights for 5968 days.

[14] In urging the court to dismiss the plaintiff's claim, the learned
Senior Federal Counsel submitted *inter alia* that the issuance of
E the certificate was pursuant to the statutory powers of the 1st
defendant under s. 104 of the Act; that there was no duty of care
owed by the defendants to the plaintiff; that the plaintiff's claim is
statute barred and that the plaintiff was guilty of laches in filing
F the suit in year 2000 and had occasioned prejudice to the
defendants because the 1st defendant had passed away. I failed
to see how the learned Senior Federal Counsel considered that
the issue of limitation is still alive given the clear judgment of the
Court of Appeal in "Rayuan Sivil No W-01-56-2001 antara
G Ronald Beadle v. Hamzah HM Saman; Lembaga Hasil Dalam
Negeri (dahulunya dikenali sebagai Jabatan Hasil Dalam Negeri)
dan Kerajaan Malaysia" that:

Further, we are also in agreement with the learned counsel for
the Appellant that during the period when the passport of the
H Appellant was retained by the Respondents the damage to the
Appellant continued. Hence, his cause of action only began to run
from the time his passport was released, that is, from 24.4.1998.
Since he filed his claim on 21.5.2000 he was therefore well within
the 36 months prescribed in the second limb of section 2(a) of
I PAPA.

[15] The above-quoted judgment was in respect of the plaintiff's appeal against the order of the High Court judge in striking out the plaintiff's instant claim against the defendants under O. 18 r. 19(1)(b) or (d) of the Rules of the High Court 1980. The order of the learned judge was reversed by the Court of Appeal, hence the present trial.

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[16] As for the defence of laches, I do not see how the defendants are being prejudiced by the death of the 1st defendant when the records would be kept by the department and hence there would be other relevant officers who could give evidence in court.

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[17] In respect of the 1st defendant's power to issue the directive, s. 104(1) of the Act provides:

The Director General, where he is of the opinion that any person is about or likely to leave Malaysia without paying:

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(a) All tax payable by him (whether or not due or due and payable);

(b) All sums payable by him under section 103(4), (5) or (5A); and

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(c) All debts payable by him under section 107A(2) or 109(2) or 109B(2),

may issue to any Commissioner of Police or Director of Immigration a certificate containing particulars of the tax, sums and debts so payable with a request for that person to be prevented from leaving Malaysia unless and until he pays all the tax, sums and debts so payable or furnishes security to the satisfaction of the Director General for their satisfaction.

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[18] In *Ong Bee Yam v. Pengarah Hasil Dalam Negeri Sarawak & Anor* (High Court in Sabah & Sarawak at Kuching OS 24-280-2001), Ian HC Chin J in considering the meaning of the term "payable by him" in s. 104(1)(a), (b) and (c) said:

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Therefore, s. 104, when it uses the term "payable by him" had in mind a person being personally liable for the payment of the tax ... Section 104, in my view, is directed only at an individual who personally owes the tax.

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- A [19] Given the fact that SEAH had already deducted the plaintiff's monthly salaries and the defendant had already directed the claim for the recovery of the tax against SEAH and had in fact obtained judgment against SEAH on 24 October 1981, clearly there was no tax payable personally by the plaintiff to the 3rd defendant as at the date when the 1st defendant issued the directive on 17 December 1981.

[20] In *Tai Choi Yu v. The Government of Malaysia and Ors* [1994] 2 CLJ 174 Mohd Eusoff bin Chin SCJ said at p. 178:

- C One of the primary functions of the DGIR under the Act is to collect and recover assessed tax effectively, and to do that, he must employ all the modes of recovery authorized under Part VII (ss. 103 to 111) of the Act. Action under s. 104 is one of the authorized modes. It is the requirement of s. 103 of the Act that
- D a person pays his assessed tax on the service of the notice of assessment on him failing which the DGIR may besides using all other authorized modes, proceed to recover in Court the assessed tax as a debt due to the Government, and if judgment is obtained, to execute the judgment.
- E Under s. 104(1) of the Act, the DGIR, if he is of the opinion that a person is about or likely to leave Malaysia without paying all the tax payable by the person, is authorized to issue a certificate requesting the Director of Immigration to prevent the person from leaving Malaysia.
- F ... But was there justification in the DGIR forming the opinion that the appellant was about or likely to leave Malaysia. The DGIR cannot read the mind of the appellant, and neither would the appellant tell the DGIR if he intends to leave Malaysia without settling his tax. The DGIR would have to base his opinion on
- G information and reports received by him, and on knowledge gathered or acquired in the course of dealing with the appellant's tax affairs. The evidence in the appeal record shows that between June 1988 to April 1990, the appellant travelled extensively overseas and stayed longer in foreign lands than in Malaysia. In the circumstances we find that the DGIR was justified in forming
- H the opinion that the appellant would leave the country without settling his tax.

- [21] Based on the aforesaid Supreme Court judgment, it is incumbent upon the defendants to make known the basis of the
- I 1st defendant's opinion which necessitates the issuance of the certificate. However the defendants here saw it fit not to adduce

any evidence. After the plaintiff had closed his case, the learned Senior Federal Counsel informed the court that the 1st defendant had passed away on 28 March 1998 and although it is probable that the records on the tax affairs of the plaintiff would be kept by the department and not the 1st defendant personally and that any officer taking over the position of the Assistant Director would be able to give evidence based on the records, the learned Senior Federal Counsel chose not to call any witness and close the defendant's case. This is despite the fact that during the case management the court was informed that the defendants will be calling two witnesses. In the light of the plaintiff's testimony that he had no intention to leave Malaysia; that he had married a Malaysian Chinese; that he had adopted a Malaysian Chinese daughter who had just started schooling at that time and that he had incorporated a few companies; in the absence of any evidence from the defendant as to how the 1st defendant formed his opinion and in the light of the judgment obtained against SEAH, it is my view that there is no basis in law and in fact for the 1st defendant to issue the certificate.

[22] The learned Senior Federal Counsel's contention that there was no breach of statutory duty cannot stand given the facts and circumstances of this case. Despite the discretionary powers of the 1st defendant in issuing the certificate, one needs to be reminded of the words of Raja Azlan Shah CJ (Malaya) as His Royal Highness then was in the case of *Pengarah Tanah dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 at p. 148:

Every legal power must have legal limits, otherwise there is dictatorship. In particular, there is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene.

[23] Gopal Sri Ram JCA in the case of *Kerajaan Negeri Selangor & Ors v. Sagong bin Tasi & Ors* [2005] 4 CLJ 169 at p. 193 said:

In a system of Parliamentary democracy modelled along the Westminster lines, it is Parliament which is made up of the representatives of the people that entrusts power to a public body. It does this through the process of legislation. The donee of the power – the public body – maybe a Minister of the Crown or

- A any other public authority. The power is accordingly held in trust for the people who are, through Parliament, the ultimate donors of the power. It follows that every public authority is in fact a fiduciary of the power it wields. Sometimes the power conferred is meant to be exercised for the benefit of a section or a class of the general public, as is the case here. At other times it is to be exercised for the general good of the nation as a whole, that is to say, in the public interest. But it is never meant to be misused or abused. And when that happens, the courts will intervene in the discharge of their constitutional duty.
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- C [24] In his judgment in the above-quoted case, Gopal Sri Ram JCA had cited the Sri Lankan case of *Premachandra v. Major Montague Jayawickrema* [1994] 2 Sri LR 90 at p. 105, wherein GPS De Silva CJ in delivering the judgment of the Supreme Court said:
- D There are no absolute or unfettered discretions in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good, and the propriety of the exercise of such discretion is to be judged by reference to the purposes for which they were so entrusted.
- E [25] Salleh Abas LP in the case of *Savrimuthu Sinnapan v. Public Prosecutor* [1987] 1 CLJ 368; [1987] CLJ (Rep) 322 at p. 176 said:
- F ... public interest, reason, and sense of justice demand that any statutory power must be exercised reasonably and with due consideration.
- G [26] In totality, having regard to the facts and circumstances of the case it is my view that the 1st defendant had acted arbitrarily and unreasonably in issuing the certificate and that the action was not in consonant with the purpose of s. 104. Section 104 of the Act empowers the 1st defendant to issue the certificate for the purposes of collecting and recovering assessed tax from the plaintiff and it is the requirement of s. 103 of the Act that a person pays his assessed tax on service of the notice of assessment on him.
- H There was no evidence whatsoever that JHDN had ever made any demand to the plaintiff for the payment of the income tax and neither did JHDN issue Notice of Assessment to the plaintiff. Clearly when the plaintiff's salaries had been deducted by SEAH
- I for the purposes of payment of the plaintiff's income tax and judgment was already obtained against SEAH on 24 October

1981, there was no real purpose for the 1st defendant in issuing the directive on 17 December 1981 against the plaintiff since s. 104(1) of the Act in the circumstances would no longer be applicable. Consequently there was no necessity for the 1st defendant to issue the certificate except to simply assert that he has the power to do so. Indeed that was the stand taken by the defendants all along; that the 1st defendant is simply exercising his powers under s. 104 of the Act.

[27] The plaintiff had claimed for RM2,935,568.65 for loss of potential earnings. His evidence is that he could have worked outside of Malaysia as an Aviation Department Manager or as a Chief of Maintenance either in Western Europe or the USA. If he had worked in Western Europe as an Aviation Department Manager his loss of potential earnings would be RM2,935,568.65 whereas as a Chief of Maintenance the loss would be RM3,918,085. And if he had worked in the USA, he could have earned RM2,826,440 as an Aviation Department Manager or RM4,434,792.40 as a Chief of Maintenance. The amount of the potential earnings were derived by the plaintiff from the annual salary survey conducted by the ROTOR & WING INTERNATIONAL magazine published in the USA. The plaintiff finally settled for the post of an Aviation Department Manager in Western Europe and he made deductions of his earnings in Malaysia. Hence the claim for the loss of earnings of RM2,935,568.65. It is my view that on the balance of probabilities the plaintiff had failed to prove the loss of earnings. In my view the plaintiff's testimony that he could have gone to work in Western Europe as an Aviation Department Manager with such amount of salary is merely theoretical which cannot serve as a proof. In the premises this claim is not allowed.

[28] I do not consider that the plaintiff has been falsely imprisoned *per se*, but on the balance of probabilities I am satisfied that the defendants had acted unreasonably and improperly and was wrong in law and in fact to issue the certificate. The acts and neglects of the defendants had caused the plaintiff worry, stress, anxiety, mental anguish, distress, hurt and helplessness and his mind and self esteem had been injured for more than 16 years, the greatest distress being the denial to visit his ailing father and to attend his father's funeral. The plaintiff gave evidence that at that time he was feeling physically sick and on the point of a complete

- A breakdown. That was, according to the plaintiff, the lowest and saddest period of his life. The plaintiff had also testified that he first arrived in the Federated States of Malaya on 9 September 1961. He was then with the British Army, Royal Electrical Mechanical Engineers (REME) seconded to the British Army Air Corps and they were in Taiping supporting 28 Commonwealth Brigade, who were fighting the communists. Hence to be treated by the defendants in such a way has caused him so much agony, having spent half of his life in Malaysia and given his intention to make Malaysia his home.
- C [29] As regards the amount of damages, the learned Senior Federal Counsel did not make any submission on the quantum, thus no assistance was rendered to the court in this respect whereas learned counsel for the plaintiff cited several authorities
- D wherein after having considered the current exchange rate submitted the amount of general damages in the range of RM11,231,591 to RM208,586,705.72
- E [30] In my view the amount submitted by learned counsel for the plaintiff is excessive. For the suffering arising out of the defendant's aforesaid conduct, it is my view that an award of general damages in the sum of RM2 million to the plaintiff would be fair and reasonable. As for exemplary damages, the principle in awarding the same has been settled in the case of *Rookes v. Barnard* [1964] AC 1129 wherein Lord Devlin stated that one of the categories of cases in which an award of exemplary damages may be made is the case of oppressive, arbitrary or unconstitutional action by the servants of the government. On the facts and circumstances of this case, I am satisfied that the
- F defendants had carried out their powers arbitrarily without any reasonable regard and consideration for the interest of the plaintiff. The plaintiff should therefore be entitled to exemplary damages. *McGregor on Damages*, 15th edn, at para 429 states:
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- H The conduct of the parties has also been taken into account in the past and ... would appear to remain today a relevant consideration in assessing exemplary damages. Thus the court may take into account, according to the decision in *Praed v. Graham*, the conduct of the defendant right down to the time of judgment ... An apology by the defendant in the witness box would make a difference in his favour, according to Singleton LJ
- I in *Loudon v. Ryder*, while persistence in the charge might increase exemplary damages.

[31] Guided by the aforesaid passage, and in the absence of a fixed formula or rate in awarding exemplary damages, it is my view that a sum of RM1 million would be fair in the circumstances. Judgment is therefore entered for the plaintiff for the above sums with interest of 8% per annum from the date of judgment until realization and costs.

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